

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
THE KRUSZ COMPANY, INC.,)
Appellant,)
vs.)
OLYMPIC AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB No. 464

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being an appeal of four civil penalties totaling \$300.00 for alleged violations of respondent's Regulation I; having come on regularly for hearing before the Pollution Control Hearings Board on the 23rd day of April, 1974, at Lacey, Washington; and appellant, The Krusz Company, Inc., appearing through its president, George Krusz and respondent, Olympic Air Pollution Control Authority, appearing through its attorney, Fred Gentry; and Board members present at the hearing being Walt Woodward (presiding) and Mary Ellen W. Gentry; and the Board having considered the transcript of the testimony and exhibits,

1 records and files herein and having entered on the 13th day of August,
2 1974, its proposed Findings of Fact, Conclusions of Law and Order, and
3 the Board having served said proposed Findings, Conclusions and Order
4 upon all parties herein by certified mail, return receipt requested
5 and twenty days having elapsed from said service; and

6 The Board having received no exceptions to said proposed Findings,
7 Conclusions and Order; and the Board being fully advised in the premises;
8 now therefore,

9 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
10 Findings of Fact, Conclusions of Law and Order, dated the 13th day of
11 August, 1974, and incorporated by this reference herein and attached
12 hereto as Exhibit A, are adopted and hereby entered as the Board's
13 Final Findings of Fact, Conclusions of Law and Order herein.

14 DONE at Lacey, Washington, this 6th day of September, 1974.

15 POLLUTION CONTROL HEARINGS BOARD

16
17 Walt Woodward
18 WALT WOODWARD, Chairman

19 W. A. Gissberg
20 W. A. GISSBERG, Member

21
22
23
24
25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I deposited in the United States mail, copies of the foregoing document on the 6th day of Sept 1974, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. George Krusz
The Krusz Company, Inc.
1818 Westlake Avenue North
Seattle, Washington 98109

Mr. Fred Gentry
Bean, Gentry and Rathbone
614 Capitol Center Building
Olympia, Washington 98501

Olympic Air Pollution Control Authority
120 East State Street
Olympia, Washington 98501


LARENE BARLIN
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
THE KRUSZ COMPANY, INC.,)
Appellant,)
vs.)
OLYMPIC AIR POLLUTION)
CONTROL AUTHORITY,)
Respondent.)

PCHB No. 464

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of four civil penalties totalling \$300.00 for an alleged violation of Respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, presiding officer, and Mary Ellen McCaffree) at a formal hearing in the Board's office at Lacey on April 23, 1974.

Appellant appeared through its president, George Krusz. Respondent appeared through its attorney, Fred Gentry. Irene Dahlgren, Olympia court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

EXHIBIT A

1 From the testimony heard, transcript read and exhibits examined,
2 the Pollution Control Hearings Board makes these

3 FINDINGS OF FACT

4 I.

5 The Krusz Company, Inc., Appellant, is engaged in the business of
6 general contracting. Its office is located at 1818 Westlake Avenue
7 North in Seattle. At all pertinent times in this matter Appellant was
8 the owner of and person controlling a ten acre parcel of land in Mason
9 County near Union, Washington. During the months of August and
10 September, 1973, Appellant was constructing the Blue Heron condominium
11 upon this parcel of land.

12 II.

13 On August 10, 1973 Respondent received a telephone complaint from
14 Mrs. Ferne A. Bonner concerning dust problems. In response to this
15 complaint, Bill Morse, inspector for the Olympic Air Pollution Control
16 Authority, met with Mr. and Mrs. Bonner. They directed Mr. Morse's
17 attention to the construction activities adjacent to their property. To
18 the west of the Bonner's property and running north and south, was a dry
19 dirt road which Appellant used to reach his construction site. Vehicular
20 traffic on this dirt road caused the dry loose dust on the road to
21 become airborne and land upon the Bonner's property. Loose dirt also
22 spread from this dirt road to Mason Street, the paved road fronting the
23 Bonner's property and running in an east and west direction. Dust on
24 this road was also disturbed by passing vehicles and became airborne.
25 There was no apparent treatment or attempt to treat the dry, dusty
26 ground.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 III.

2 At about 11:00 a.m. on August 10, 1973, Mr. Morse issued Notice of
3 Violation No. 619 for causing the above described dust problem in
4 violation of Section 9.03(c) of Respondent's Regulation I. From this
5 citation, a \$50.00 civil penalty was assessed. (Respondent's Exhibit 3)
6 This penalty is one matter of the present appeal.

7 IV.

8 Mr. Morse concurrently issued Notice of Violation No. 620 for
9 failing to take precautions to prevent air pollution in violation of
10 Section 9.05(e) of Respondent's Regulation I. From this citation a
11 \$50.00 civil penalty was assessed. (Respondent's Exhibit 5) This
12 penalty is the second matter of the present appeal.

13 V.

14 While in the area on the same day, Mr. Morse noticed a fire on
15 the property of Appellant. Miscellaneous materials, including wood,
16 cans, paper and plastic, were being burned in the open. No burning
17 permit was produced for this fire.

18 VI.

19 For the above described open fire, Mr. Morse issued Notice of
20 Violation No. 621 for the violation of Section 9.01 of Respondent's
21 Regulation I. From this citation, a \$100.00 civil penalty was assessed.
22 (Respondent's Exhibit 7) This penalty is the third matter of this
23 appeal.

24 VII.

25 On September 14, 1973, at about 10:50 a.m. Mr. Morse visited
26 Appellant's site in response to a telephone complaint by the Bonners.

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 Dust was observed in the air similar to that of the previous occasion.
2 No substantial preventive measures were taken to avoid this dust
3 pollution. Although a water truck was present on the site, it was not
4 in working order and did not constitute any serious preventive effort
5 on the part of Appellant.

6 VIII.

7 For the events observed on September 14, 1973, Mr. Morse issued
8 Notice of Violation No. 549 for violating Section 9.03 of Respondent's
9 Regulation I and WAC 18-04-040(8). From this citation, a \$100.00 civil
10 penalty was assessed. (Respondent's Exhibit 10) This penalty is the
11 fourth matter of this appeal.

12 IX.

13 The dust problem created by Appellant was an unreasonable disturbance
14 to the Bonners. It was especially irritating to Mr. Bonner, who was
15 suffering from respiratory problems. The Bonner's real property,
16 including areas both inside and outside of their home, was covered with
17 dust caused by Appellant's operation. The Bonners also suffered from
18 eye irritations caused from the dust created by Appellant's conduct.
19 These problems existed on August 10 and September 14, 1973. It also
20 occurred during the summer of 1973.

21 X.

22 Appellant actually received each and every notice of violation and
23 notice of civil penalty described above.

24 XI.

25 Section 9.01 of Respondent's Regulation I provides in part:

26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER

1 (a) No person shall cause or allow any open fire within the
2 jurisdiction of the Authority (with exceptions not here
relevant)

3 (b) Open burning other than the above exceptions may be
4 conducted only by permit

5

6 (e) It shall be prima facie evidence that the person who
owns or controls property on which an open fire,
7 prohibited by this Regulation, occurs has caused or
allowed said open fire.

8 XII.

9 Section 9.03(c) of Respondent's Regulation I provides:

10 No person shall cause or allow the emission of particles
11 of such size or nature as to be visible individually in
sufficient number to cause annoyance to any other person.
12 This restriction shall apply only if such particles fall
on the real property other than that of the person
13 responsible for the emission.

14 XIII.

15 Section 9.05(e) of Respondent's Regulation I provides:

16 No person shall cause or allow any construction, alteration,
17 repair, maintenance or demolition work without taking
precautions to prevent air pollution.

18 XIV.

19 Section 3.27 of Respondent's Regulation I provides for the
20 assessment and collection of a fine not to exceed \$250.00 per day for
21 each violation of any provision of Regulation I.

22 XV.

23 Any Conclusion of Law hereinafter recited which should be deemed
24 a Finding of Fact is hereby adopted as such.

25 From these Findings, the Pollution Control Hearings Board comes
26 to these

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

CONCLUSIONS OF LAW

I.

Appellant violated Section 9.03(c) of Respondent's Regulation I on August 10, 1973 by causing or allowing visible and annoying particulate emission to fall on the real property of another.

II.

Appellant violated Section 9.05(e) of Respondent's Regulation I on August 10, 1973 by failing to take precautionary measures of any significance that would prevent air pollution while causing or allowing its construction to progress.

III.

Appellant violated Section 9.01 of Respondent's Regulation I on August 10, 1973 by causing or allowing an open fire without a permit. Appellant is liable for this penalty as owner or controller of the property inasmuch as no controverting evidence is apparent in the record.

IV.

Appellant violated Section 9.03 of Respondent's Regulation I on September 14, 1973 by causing or allowing visible and annoying particulate emissions to fall on the real property of another. This conduct also violated the provisions of WAC 18-04-040(8).

V.

The penalties imposed under Section 3.27 of Respondent's Regulation I are reasonable in view of the repeated violations, the degree of annoyance caused to others, and the ease with which the harm could have been avoided. Appellant presents the impression of a person who consciously balanced the economic trade-off between continuing

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 construction and complying with the applicable regulations. By failing
2 to make any serious efforts to comply with the air pollution regulations
3 Appellant has chosen to suffer these penalties.

4 VI.

5 Any Finding of Fact which should be deemed a Conclusion of Law
6 is hereby adopted as such.

7 Therefore, the Pollution Control Hearings Board issues this

8 ORDER

9 The appeal from the imposition of the \$50.00 civil penalty from
10 Notice of Violation No. 619 on August 10, 1973 is denied.

11 The appeal from the imposition of the \$50.00 civil penalty from
12 Notice of Violation No. 620 on August 10, 1973 is denied.

13 The appeal from the imposition of the \$100.00 civil penalty from
14 Notice of Violation No. 621 on August 10, 1973 is denied.

15 The appeal from the imposition of the \$100.00 civil penalty from
16 Notice of Violation No. 549 on September 14, 1973 is denied.

17 DONE at Lacey, Washington this 13th day of August, 1974.

18 POLLUTION CONTROL HEARINGS BOARD

19 Walt Woodward
20 WALT WOODWARD, Chairman

21 W. A. Gissberg
22 W. A. GISSBERG, Member

23
24 CHRIS SMITH, Member

25
26 FINDINGS OF FACT,
27 CONCLUSIONS OF LAW AND ORDER